

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 09-4003-04-CR-C-NKL
)
DEMARCO LARON BURNETT,)
)
Defendant.)
)
)

ORDER

On June 30, 2009, United States Magistrate Judge William A. Knox issued three Reports and Recommendations recommending that this Court enter orders denying motions filed by Defendant DeMarco Laron Burnett ("Burnett"). These Reports and Recommendations followed a June 8, 2009 hearing on the motions. The Court will address each Report and Recommendation ("Report") in turn.

I. Reports and Objections

A. Doc. # 245: Report Concerning Motion to Suppress

The first Report [Doc. # 245] recommends denying Defendant Burnett's motion to suppress [Doc. # 213]. Burnett's motion argues that there was no probable cause for his arrest and the search of his person incident to his arrest was improper.

Burnett filed objections to the Report on his motion to suppress. Citing general case law on standards for probable cause, he appears to argue that Officer Brotemarkle was

without probable cause to arrest Burnett despite (1) information provided by Officer Jones that he had observed Burnett driving (after having stopped Burnett three weeks prior when he was driving on a revoked license), and (2) the independent records check that disclosed that Burnett's license had been revoked. The Court agrees with the Report that Officer Brotemarkle had probable cause to arrest Burnett and overrules the objection.

Burnett also objects that the search incident to arrest was invalid in that it amounted to an improper "strip search." The Court has reviewed the record and agrees with the Report that removing Burnett's baggy pants so that Burnett was in his boxer shorts – already exposed under the baggy pants – and investigating the lump in Burnett's shorts while Burnett was resisting was not an improper strip search. Burnett's objection in this regard is overruled.

B. Doc. # 246: Report Concerning Motion for Change of Venue

The second Report [Doc. # 246] recommends denying Defendant Burnett's motion for a change of venue [Doc. # 214]. Burnett argues that pretrial publicity concerning the "Cut Throat Gang" will render his trial constitutionally unfair.

Burnett objects to this Report. In addition to arguing his underlying motion, he appears to argue that prejudice arises from the combination of pretrial publicity concerning gang activity relating to this case and the City of Columbia's denial that a gang problem exists. The Court has reviewed the record and finds that the trial publicity is not so extreme that a change of venue is warranted. The issue of publicity will be addressed during voir dire.

C. Doc. # 247: Report Concerning Motion for Severance

The third Report recommends denying Defendant Burnett's motion for severance [Doc. # 215]. Burnett argued for severance because a jury would not be able to compartmentalize the evidence against him, which he indicates will demonstrate his minimal involvement with the charges in the indictment.

Burnett objects that it would be a "scandal and gross inequity" to try him along with "a group of gun-toting drug dealers" where he has never been charged with a weapons crime.

The Court has reviewed the record and agrees with the Report that Burnett is properly joined. He is charged in several counts of the indictment on allegations concerning the same series conduct as are the other defendants. Burnett has indicated no prejudice requiring severance, and limiting instructions will insure that the jury considers only the evidence applicable to Burnett when it returns his verdict. The Court overrules Burnett's objection.

II. Conclusion

After a *de novo* review of the record, the Court is convinced that the Reports and Recommendations of the Magistrate are correct and should be adopted. Accordingly, it is hereby ORDERED that Burnett's objections are OVERRULED and the Reports and Recommendations [Docs. ## 245, 246, 247] are ADOPTED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: August 31, 2009
Jefferson City, Missouri